

DOCKET NO. AAN-CV20-6039670-S

SUPERIOR COURT

DIANNA PIAZZA

J.D. OF ANSONIA/MILFORD

V.

AT MILFORD

JOHN GALLAGHER and
BEATRIZ GALLAGHER

June 16, 2021

**AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

STATE OF CONNECTICUT)
)
COUNTY OF FAIRFIELD) ss. SHELTON

DIANNA PIAZZA, the plaintiff herein, being duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) and believe in the obligations of an oath. I make this Affidavit in support of the plaintiff's motion for the issuance of a prejudgment remedy against the defendant BEATRIZ GALLAGHER (the "Defendant").

2. I currently reside at 67 Chamberlain Drive, Shelton, Connecticut 06484 ("Property").

3. John Gallagher was an individual residing at 71 Chamberlain Drive, Shelton, Connecticut 06484 ("71 Chamberlain").

4. Beatriz Gallagher is an individual residing at 71 Chamberlain.

5. At all times relevant, John Gallagher and Beatriz Gallagher (collectively the "Gallaghers") owned, controlled or were otherwise responsible for maintaining 71 Chamberlain.

6. On or about February 1, 2021, the defendant, John Gallagher died and title to 71 Chamberlain passed to the defendant Beatriz Gallagher through operation of law.

7. Prior to September of 2018, the Gallaghers had installed or continued to make use of a storm water drainage pipe (the "Pipe") located underneath the driveway of the Gallaghers' 71 Chamberlain residence.

8. On or about September 25, 2018, storm water runoff entered the Property ("2018 Incident").

9. The 2018 Incident was the result of the Pipe's inability to properly facilitate the flow of storm water runoff in one or more of the following ways:

a. the Pipe's diameter was inadequate for purposes of handling the flow of storm water runoff;

b. the Pipe did not have a uniform diameter, thereby resulting in clogging and disruption of the flow of storm water runoff; and

c. the Pipe was installed in such a manner that prevented it from receiving significant portions of the storm water runoff, thus causing storm water to disburse onto 71 Chamberlain and surrounding parcels including the Property rather than into the Pipe.

10. The storm water runoff that entered the Property as a result of the 2018 Incident unreasonably interfered with the Plaintiff's use of and caused damage to the Property in one or more of the following ways:

a. it caused damage to and prevented the use of the Plaintiff's driveway and an adjacent concrete walkway;

b. eroded a portion of the Property and altered the grading throughout the Property;

c. it displaced rocks, landscaping and outdoor furniture throughout the Property;

d. it changed the groundwater table resulting in recurrent sinkholes on the Property adjacent to the Plaintiff's driveway;

e. the resultant sinkholes damaged the pole lights lining the Plaintiff's driveway causing them to cease functioning; and

f. it caused damage to the Plaintiff's motor vehicle.

Partial Repair of Damage from 2018 Incident

11. In March of 2019, I hired James Mondo of Mondo Construction, LLC and Mondo Septic and Drainage, LLC to evaluate the Property and repair the damage caused by the 2018 Incident. Mr. Mondo issued an invoice for \$10,800.00 for the work done to partially repair the damage caused by the 2018 Incident. The partial repairs included: removal of brush and debris, repair to retaining wall and asphalt removal. A copy of the invoice from Mondo Construction is included herewith as "EXHIBIT 1"

12. Mondo Construction completed the work detailed in EXHIBIT 1 on or about May 1, 2019.

2019 Incident

13. Between December 6, 2019, and December 9, 2019 storm water runoff again entered the Property ("2019 Incident").

14. The 2019 Incident was the result of the Pipe's inability to properly facilitate the flow of storm water runoff in one or more of the following ways:

a. the Pipe's diameter was inadequate for purposes of handling the flow of storm water runoff;

b. the Pipe did not have a uniform diameter, thereby resulting in clogging and disruption of the flow of storm water runoff; and

c. the Pipe was installed in such a manner that prevented it from receiving significant portions of the storm water runoff, thus causing storm water to disburse onto 71 Chamberlain and surrounding parcels including the Property rather than into the Pipe.

15. The storm water runoff that entered the Property as a result of the 2019 Incident unreasonably interfered with the Plaintiff's use of and caused damage to the Property in one or more of the following ways:

a. it caused damage to and prevented the use of the Plaintiff's driveway and adjacent concrete walkway;

b. eroded a portion of the Property and altered the grading throughout the Property;

c. it displaced rocks, landscaping and outdoor furniture throughout the Property;

d. it changed the groundwater table resulting in recurrent sinkholes on the Property;

e. the resultant sinkholes damaged the pole lights lining the Plaintiff's driveway causing them to cease functioning; and

f. it caused damage to the Plaintiff's motor vehicle.

16. As a result of the above-described interference with the Plaintiff's use and enjoyment of the Property, the Plaintiff has sustained damages as detailed herein.

17. The Gallaghers knew or should have known that failing, neglecting, or otherwise refusing to remediate the condition on their property after the 2018 Incident would lead to future damage to the Plaintiff's Property.

18. The Gallaghers failed, neglected, or otherwise refused to remediate the condition on 71 Chamberlain with a reckless indifference to the rights of the Plaintiff.

19. The Gallaghers have a duty to keep and maintain their 71 Chamberlain residence in a manner that will not result in damage to surrounding properties.

20. The Gallaghers have breached the above-described duty in one or more of the following ways:

- a. the Gallaghers failed, neglected or otherwise refused to repair or replace the Pipe;

- b. the Gallaghers failed, neglected, or otherwise refused to conduct regular inspections of the Pipe to ensure that it is free and clear of debris; and

- c. the Gallaghers failed, neglected, or otherwise refused to adequately landscape the area of 71 Chamberlain that surrounds the Pipe, thus allowing debris to enter the Pipe and prevent proper drainage of storm water runoff.

21. The 2018 Incident and 2019 incident were a further result of the Gallaghers' breach of their duty to keep and maintain 71 Chamberlin in a manner that would not result in damage to the surrounding properties.

22. The Gallaghers knew or should have known that their breach would result in harm to the Plaintiff.

Brian Roach's Investigation

23. In January of 2020, Brian Roach, Superintendent of Public Works for the City of Shelton ("Superintendent Roach") surveyed the damage to the Property.

24. Superintendent Roach informed me of the following:

a. The damage to the Pipe rendered the Pipe inadequate for its purpose and it was the cause of the 2019 Incident;

b. The Pipe was installed in the 1970s and there was no record that permit was obtained for its installation.

c. The Pipe was the responsibility of the owners of 71 Chamberlain, more specifically John and Beatriz Gallagher.

Engineer D'Amico's Investigation

24. Between January and February of 2020, I hired Civil Engineer Fred D'Amico ("Engineer D'Amico") to investigate the cause of the 2018 and 2019 Incident.

25. Engineer D'Amico produced a report concluded that the Pipe was the cause of the ongoing issues with storm water entering my property and further that the Pipe was inadequate for its purposes and needed to be replaced with a larger pipe. A copy of Engineer D'Amico's report is included herewith as "Exhibit 2".

James Mondo's Damage Evaluation

26. Between January and March of 2020, I spoke on several occasions with James Mondo concerning the damage to the Property.

27. Between January and March of 2020, James Mondo surveyed the Property at my request to determine what repairs and remediations were required.

28. James Mondo informed me that the Property would require approximately \$36,800.00 worth of repairs as detailed in an invoice entitled "Residential Drainage Remediation" and dated June 12, 2020. A copy of the invoice is attached hereto and incorporated herein as "EXHIBIT 3".

29. James Mondo further stated that he concurred with Engineer D'Amico's conclusions concerning the Pipe.

30. The corrective work done to date and to be done includes but is not limited to:

a. \$10,800.00 for the partial repair of damage caused by 2018 Incident. See Exhibit 1.

b. \$36,800.00 for repair and remediation of damage to the Property caused by the 2018 and 2019 incident. See Exhibit 3.

31. The damages sustained in addition to all corrective work include but are not limited to:

a. An estimated \$5,000.00 to replace various lawn decorations, outdoor furniture and other items damaged or destroyed during the 2018 and 2019 incident;

b. An estimated \$971.73 for costs associated with litigation; and
An estimated \$17,135.00 in attorney's fees.

Certification Pursuant to Connecticut Practice Book § 4-5

32. Between January and February of 2021, my nephew, Daniel Sullivan, informed me that he had been in discussions with Beatriz Gallagher concerning the purchase and sale of 71 Chamberlain.

33. On or about February 8, 2021, Beatriz Gallagher and her daughter approached me about helping my nephew, Daniel Sullivan, purchase 71 Chamberlain.

34. On or about April 17, 2021, I spoke to my neighbor John Coniglio who informed me that he was also approached by Beatriz Gallagher about potentially purchasing 71 Chamberlain. Mr. Coniglio further informed me that several real estate agents had visited and inspected 71 Chamberlain.

35. Between April and May of 2021, there have been several contractors performing work on 71 Chamberlain including installation of a new roof, removal and trimming of trees, general landscaping.

36. The purpose of the above described repairs is effectuate a sale of 71 Chamberlain.

37. If 71 Chamberlain Drive is sold prior to disposition of the above captioned matter and the Pipe remains installed, storm water runoff will continue to enter the Property resulting in future damages to and unreasonable interferences with Plaintiff's use of the Property.

38. Unless a temporary restraining order is entered, Defendant will sell 71 Chamberlain thereby changing the status quo and preventing Plaintiff from being awarded the relief sought under Count One of the Complaint.

39. If the court does not restrain the Defendant from selling or otherwise divesting title to 71 Chamberlain, then Plaintiff will have no legal remedy available to request a court order mandating Defendant replace the Pipe with one that is adequate for its purposes.

40. The Defendant has been on notice of the issues with the Pipe since the 2018 incident, and has neglected, failed or refused to remedy the issue with the Pipe and will likely sell 71 Chamberlain without addressing the Pipe unless the court issues the requested temporary restraining order and preliminary injunction.

41. Further, if the Pipe is not replaced and Defendant is allowed to sell 71 Chamberlain then Plaintiff will have no adequate remedy at law to effectuate the necessary replacement of the Pipe and will continue to suffer future unreasonable interference with her use and enjoyment of the Property and damage thereto.

I believe that the foregoing facts are sufficient to show that there is probable cause that:

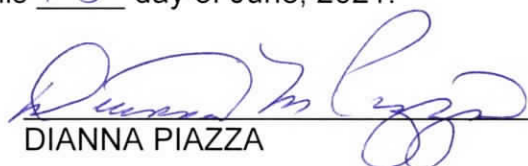
a. Defendant is actively seeking to sell and divest title to 71 Chamberlain prior to a disposition of the above captioned matter and this is sufficient cause for granting Plaintiff's motion for a temporary restraining order;

b. Plaintiff will have no adequate remedy of law if the court does not issue the requested temporary restraining order and preliminary injunction prior to the sale of 71 Chamberlain;

c. the issuance of a temporary restraining order would preserve the status quo; and

d. it would be inequitable to allow Defendant to sell and/or otherwise divest title to 71 Chamberlain prior to replacing the Pipe as it would subject Plaintiff to future unreasonable interference with her use of the Property and future damages thereto and Defendant, by selling 71 Chamberlain, would be acting with reckless indifference to the rights of Plaintiff.

Dated at Shelton, Connecticut this 15 day of June, 2021.


DIANNA PIAZZA

Subscribed and sworn to
before me, this 15 day of
June, 2021


Commissioner of the Superior Court